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DISH Network Corporation, et al.

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

ENTROPIC COMMUNICATIONS,
LLC,

Plaintiff,

v.

DISH NETWORK CORPORATION;
DISH NETWORK L.L.C.; DISH
NETWORK SERVICE L.L.C.; AND
DISH NETWORK CALIFORNIA
SERVICE CORPORATION,

Defendants.

Case No. 2:23-cv-1043-JWH-KES

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS DISH NETWORK
CORPORATION ET AL.'S MOTION
FOR EXTENSION OF CLAIM
CONSTRUCTION SCHEDULE**

Hearing Date: April 5, 2024
Hearing Time: 9:00 a.m.
Courtroom: 9 D
Judge: Hon. John W. Holcomb

1 DISH NETWORK CORPORATION;
2 DISH NETWORK L.L.C.; DISH
3 NETWORK SERVICE L.L.C.; DISH
4 NETWORK CALIFORNIA SERVICE
5 CORPORATION; AND DISH
6 TECHNOLOGIES L.L.C.,

7 Counter-Claimants,

8 v.

9 ENTROPIC COMMUNICATIONS,
10 LLC; MAXLINEAR, INC.; AND
11 MAXLINEAR COMMUNICATIONS
12 LLC,

13 Counter-Defendants.

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I. INTRODUCTION

Defendants DISH Network Corporation, DISH Network L.L.C., Dish Network Service L.L.C., and Dish Network California Service Corporation (“DISH”) seek an extension of the claim construction schedule (set forth in D.I. 97) until after the institution decisions on DISH’s *inter partes* review (“IPR”) petitions. DISH has filed IPR petitions against seven of the ten patents remaining in the case: U.S. Patent Nos. 7,295,518 (the “’518 Patent”); 7,594,249 (the “’249 Patent”); 7,889,759 (the “’759 Patent”); 8,320,566 (the “’0,566 Patent”); 8,363,681 (the “’681 Patent”); 8,621,539 (the “’539 Patent”); and 8,631,450 (the “’450 Patent”) (collectively, the “IPR Patents”). Because this Court’s “usual practice” is to wait to stay cases until after the Patent Trial and Appeal Board (“PTAB”) issues IPR institution decisions (*see Entropic Commc’ns, LLC v. DirecTV, LLC*, No. 07775, 2023 WL 3407132, at *2 (C.D. Cal. Apr. 17, 2023)), DISH’s requested extension of just the claim construction schedule will allow the parties and the Court to conserve valuable resources without staying the entire case pre-institution. After issuance of the institution decisions, DISH expects to take up the issue of whether a stay is appropriate.

Continuing the claim construction schedule pending the PTAB’s institution decisions—all forthcoming within the next six months—will promote judicial economy and streamline any dispute that remains after the IPRs are complete. DISH’s IPR petitions challenge all but three of the remaining patents. The three patents not subject to DISH’s IPRs—U.S. Patent Nos. 9,838,213 (the “’213 Patent”), 10,432,422 (the “’422 Patent”), and 8,085,802 (the “’802 Patent”)—are subject to pending motions to dismiss under Section 101. By the time the PTAB issues institution decisions, the Court may have resolved these Section 101 motions, which may further streamline claim construction.

The Court’s current claim construction schedule runs concurrent with the PTAB’s six-month timeline for considering DISH’s IPR petitions. By the time the PTAB issues its last institution decision on DISH’s petitions, without the requested

1 extension, the parties will have briefed all claim construction issues across all ten
2 patents in preparation for a claim construction hearing less than a month away. This
3 parallel timeline presents a significant risk that much of the parties' and the Court's
4 work through the claim construction process could be superseded by the time of the
5 hearing if Entropic's arguments in response to the petitions and/or the PTAB's
6 institution decisions add relevant disclaimers or limitations to the claims and
7 ultimately result in the case being stayed. In fact, the PTAB's final written decisions
8 in the IPRs could pare back or even moot the IPR Patents altogether.

9 A limited claim construction extension will not unfairly prejudice Entropic.
10 Entropic is a non-practicing entity whose sole business is litigation and licensing. It
11 does not compete with DISH and does not participate in any product or service
12 market. To the extent the delay in obtaining a final judgment in this Court causes any
13 harm to Entropic, money damages will readily compensate Entropic for that harm.

14 In sum, DISH requests that the Court extend the claim construction schedule
15 such that it commences after the PTAB issues the institution decisions, at which time
16 the parties and the Court can also determine whether the case should be stayed. The
17 other consolidated defendants in this case (i.e., the Cox defendants, the Comcast
18 defendants, and the DIRECTV defendants) have informed DISH they do not oppose
19 this motion. *See* Train Decl. ¶ 3.

20 **II. BACKGROUND**

21 On February 10, 2023, Entropic filed its complaint against DISH alleging
22 infringement of twelve patents. (D.I. 1.) DISH subsequently filed a motion to dismiss
23 two of the originally asserted patents (U.S. Patent Nos. 8,228,910 and 10,257,566) as
24 patent ineligible under Section 101, which the Court granted. (D.I. 50 and 103.)
25 Contemporaneously with its suit against DISH, Entropic filed a series of lawsuits in
26 this Court against other defendants, asserting the same twelve patents. Cox
27 Communications, Inc., Coxcom, LLC, and Cox Communications California, LLC
28 (collectively, "Cox") filed a motion to dismiss the '213 and '422 Patents under

Section 101 in Case No. 2:23-cv-1047 (the “1047 Case”) (now consolidated with this case). (1047 Case, D.I. 64.) The Court tentatively granted Cox’s motion as to both patents. DIRECTV, LLC and AT&T Services, Inc. (collectively “DIRECTV”) filed a motion to dismiss the ’681, ’759, ’518, ’539, and ’802 Patents under Section 101 in Case No. 2:23-cv-05253 (the “5253 Case”) (now consolidated with this case). (D.I. 132 and 160; *see also* 5253 Case, D.I. 45.) The Court tentatively granted DIRECTV’s motion as to several patents, including the ’802 Patent.

DISH filed IPR petitions in January and February 2024 against seven of the ten remaining patents. Comcast Corporation, Comcast Cable Communications, LLC, and Comcast Cable Communications Management, LLC (collectively, “Comcast”) also filed IPR petitions against two of the same patents (the ’518 and ’759 Patents). As stated above, the three patents not pending IPR—the ’213, ’422, and ’802 Patents—are each subject to pending motions to dismiss. The IPR and motion to dismiss statuses for the ten asserted patents are summarized below in the table.

Asserted/Challenged Patent and Claims	IPR Case No.	Last Day for IPR Inst. Dec. ¹	Section 101 Motion to Dismiss Status
7,295,518 Asserted Claims: 1 DISH IPR Challenged Claims: 1, 3	IPR2024- 00393 (DISH)	Jul. 31, 2024 (DISH)	Motion Filed by DIRECTV – Pending
Comcast IPR Challenged Claims: 1-4	IPR2024- 00431 (Comcast)		

¹ The PTAB will issue an institution decision no later than six months after it mails the notice of filing date accorded to the petition—for example, the PTAB mailed the notice in the ’759 IPR on February 28, 2024 (five weeks after DISH filed the IPR), which then triggered the institution deadline of August 28, 2024. This six-month

Asserted/Challenged Patent and Claims	IPR Case No.	Last Day for IPR Inst. Dec. ¹	Section 101 Motion to Dismiss Status
7,594,249 Asserted Claims: 10, 13, 17 DISH IPR Challenged Claims: 1-17	IPR2024- 00373	Jul. 30, 2024	
7,889,759 Asserted Claims: 1-3 DISH IPR Challenged Claims: 1-3	IPR2024- 00462 (DISH)	Aug. 28, 2024 (DISH)	Motion Filed by DIRECTV – Pending
Comcast IPR Challenged Claims: 1-23	IPR2024- 00452 (Comcast)	Aug. 22, 2024 (Comcast)	
8,320,566 Asserted Claims: 1-6, 12 DISH IPR Challenged Claims: 1-6, 12	IPR2024- 00555	Aug. 27, 2024	

calculation is based on two statutory provisions. First, 35 U.S.C. § 314 indicates that an institution decision shall come three months after the filing of, or the deadline for, the patent owner’s preliminary response (“POPR”), whichever comes first. According to 35 U.S.C. § 313, the POPR is due within three months after the PTAB mails the filing date notice, meaning that, by statute, the PTAB’s last day to issue its institution decision is six months after the notice. *See also* 37 C.F.R. § 42.107(b). If the patent owner files its POPR early, or waives its POPR, the PTAB’s institution deadline is advanced accordingly.

Asserted/Challenged Patent and Claims	IPR Case No.	Last Day for IPR Inst. Dec. ¹	Section 101 Motion to Dismiss Status
8,363,681 Asserted Claims: 1-3, 6-10 DISH IPR Challenged Claims: 1-40	IPR2024-00562	Aug. 23, 2024	Motion Filed by DIRECTV – Pending (tentatively granted)
8,621,539 Asserted Claims: 1-7 DISH IPR Challenged Claims: 1-7	IPR2024-00546	Aug. 27, 2024	Motion Filed by DIRECTV – Pending (tentatively granted)
8,631,450 Asserted Claims: 29-33 DISH IPR Challenged Claims: 29-38	IPR2024-00560	Aug. 23, 2024	
8,085,802 Asserted Claim 3			Motion Filed by DIRECTV – Pending (tentatively granted)
9,838,213 Asserted Claims 1-7, 10-12			Motion Filed by Cox – Pending (tentatively granted)
10,432,422 Asserted Claims 1-11			Motion Filed by Cox – Pending (tentatively granted)

DISH has attached its IPR petitions as Exhibits 1-7 to the concurrently filed Declaration of Tyler R. Train.

1 Because DISH has challenged all asserted claims of seven asserted patents (and
2 Comcast has also challenged all asserted claims of two of them), the IPR petitions are
3 likely to affect, narrow, and/or entirely moot many claim construction issues.
4 Accordingly, DISH moves to extend and continue the claim construction schedule
5 pending institution decisions for the IPR petitions.

6 **III. LEGAL STANDARD**

7 DISH's request is made pursuant to Rules 6(b) and 16(b) of the Federal Rules
8 of Civil Procedure for good cause and not for purposes of delay. Rule 6(b) provides
9 that a court may, "for good cause, extend the time [to act] with or without motion or
10 notice if the court acts, or if a request is made, before the original time or its extension
11 expires[.]" Fed. R. Civ. P. 6(b)(1)(a); *see also* Fed. R. Civ. P. 16(b)(4) (allowing
12 modification to a scheduling order "for good cause and with the judge's consent").
13 "'Good cause' [under Rule 6(b)] is a non-rigorous standard that has been construed
14 broadly across procedural and statutory contexts." *Ahanchian v. Xenon Pictures, Inc.*,
15 624 F.3d 1253, 1259 (9th Cir. 2010). And "requests for extensions of time made
16 before the applicable deadline has passed should 'normally . . . be granted in the
17 absence of bad faith on the part of the party seeking relief or prejudice to the adverse
18 party.'" *Id.* (quoting 4B Charles Alan Wright & Arthur R. Miller, *Federal Practice*
19 *and Procedure* § 1165 (3d ed. 2004)).

20 **IV. ARGUMENT**

21 **A. Good Cause for Extension Exists Based on the Early Stage of** 22 **Litigation and Potential for Simplification.**

23 Although filed a year ago, this case is still at an early stage. Fact discovery has
24 only recently begun, expert discovery has not commenced, and the claim construction
25 schedule has not yet begun. Indeed, the Court's current claim construction schedule
26 sets the opening *Markman* brief deadline several months from now (July 9, 2024) and
27 the *Markman* hearing two months after that (September 17, 2024). (D.I. 97.) The
28 Court has not set dates beyond the claim construction schedule, meaning no summary

judgment or trial dates are set. In terms of the key substantive and even procedural events that remain, the amount of work still to do far outweighs the work that has already been completed. *See Limestone v. Micron Tech.*, No. 15-0278, 2016 WL 3598109, at *3 (C.D. Cal. Jan. 12, 2016) (Carter, J.) (favoring stay pending IPRs where “there is more work ahead of the parties and the Court than behind the parties and the Court”); *see also WAG Acquisition, LLC v. Amazon.com, Inc.*, No. C22-1424JLR, 2023 WL 1991888, at *1 (W.D. Wash. Feb. 14, 2023) (ordering the parties “to show cause why the current *Markman* hearing date should not be stricken” pending IPRs where the “case is in its early stages”).

Because the Court’s current claim construction schedule runs concurrent with the PTAB’s six-month timeline, delaying claim construction while the IPRs play out will be more efficient. As shown in the table below, by the time the PTAB issues its last institution decision on DISH’s IPR petitions, the parties will have briefed all claim construction issues (including submitting expert reports and taking expert depositions) in preparation for a claim construction hearing less than a month away.

Event	Current Deadline
Exchange of Terms Proposed for Construction	April 5, 2024
Exchange of Proposed Constructions	May 3, 2024
<i>Entropic’s Last POPR Deadline</i>	<i>May 28, 2024</i>
JCCS and Prehearing Statement, including Expert Declarations	May 31, 2024
Completion of Claim Construction Discovery	June 21, 2024
Opening Claim Construction Brief	July 9, 2024
Responsive Claim Construction Brief	August 2, 2024
Reply Claim Construction Brief	August 23, 2024
<i>PTAB’s Last Institution Decision</i>	<i>August 28, 2024</i>
Claim Construction Hearing	September 17, 2024

1 This parallel timeline presents a significant risk that much of the parties’ and
2 the Court’s work through the claim construction process could be impacted by the
3 time of the hearing. On the other hand, an extension of the claim construction
4 schedule would preserve substantial resources while still allowing other case events,
5 such as discovery and pending motions, to continue. *See* Fed. R. Civ. P. 1 (Federal
6 Rules should be administered to secure the “inexpensive determination of every action
7 and proceeding.”).

8 This is a large case, and DISH’s IPR effort against seven of the patents is likely
9 to reduce the scope of the case and significantly narrow the claim construction issues.
10 Entropic currently asserts over fifty claims across the ten remaining patents, far more
11 than would ever reasonably be brought to trial. DISH’s IPR petitions challenge the
12 validity of the seven IPR Patents, covering the majority of the asserted claims and
13 thus providing the opportunity to narrow this litigation to a trial-manageable scope.
14 The likelihood that all asserted claims survive the challenges facing them (both at the
15 PTAB and before this Court) is low.² Indeed, the IPRs could result in cancellation of
16 all asserted claims in the IPR Patents. Even if some claims survive, any amount of
17 narrowing by the PTAB will conserve Court and party resources. Continuing the
18 claim construction schedule will offer clarity on the scope of the case and asserted
19 claims by allowing the PTAB to issue institution decisions to inform the claim
20 construction process. This will also provide additional time for the Court to finalize
21 decisions on Cox’s and DIRECTV’s motions to dismiss, which may further narrow
22 the case for claim construction. *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF,
23 2014 WL 6068407 at *3 (N.D. Cal. Nov. 13, 2014) (continuing claim construction
24 proceedings pending IPRs to allow the court to consider other pending issues and
25 “once all the dust has settled, permit the parties to proceed with claim construction in
26 a more orderly fashion.”).

27
28 ² As of October 2023, the PTAB’s overall institution rate stands at 67% and is as high
as 79% for “electrical/computer” technology patents. Train Decl., Ex. 8 at 8.

Moreover, even if minimal or no claims are cancelled in the IPRs, the intrinsic record developed during the IPR proceedings will inform issues in the case, including claim construction. *See Limestone*, 2016 WL 3598109, at *3 (“Waiting for the outcome of the [PTAB proceeding] could eliminate the need for trial if the claims are cancelled, or, if the claims survive, facilitate trial by providing the court with expert opinion of the PTO and clarifying the scope of the claims”; “The assistance of the PTO is particularly helpful when a party has requested PTO review of many claims of the patents-in-suit”) (internal quotations and citations omitted)); *Sleep Number Corp. v Sizewise Rentals, LLC*, No. 18-00356, 2019 WL 1091335, at *3 (C.D. Cal. Feb. 12, 2019) (Birotte, J.) (quoting *SCA Hygiene Products Aktiebolag v. Tarzana Enters., LLC*, No. 17-04395, slip op. at *11 (C.D. Cal. Sept. 27, 2017)) (“[T]he Court believes it will benefit from the expert evaluation of the issues by the Patent Office.”). At minimum, the statements that Entropic makes to the PTAB about its claims in view of the prior art grounds will undoubtedly inform the claim construction process via prosecution history.³

Because DISH’s requested extension will likely simplify the issues for claim construction and beyond, and thereby conserve resources, good cause exists for granting the extension.

B. An Extension Will Not Prejudice Entropic.

Extending the claim construction schedule will not prejudice Entropic in any material way. Entropic does not compete with DISH, or any of the other defendants. But rather—as a private equity-backed non-practicing entity—it seeks only money damages and has not moved for a preliminary injunction. *See Core Optical v. Fujitsu Network Commc’ns, Inc.*, No. 16-00437, 2016 WL 7507760, at *2 (C.D. Cal. Sept. 12, 2016) (Guilford, J.) (“[A] primary issue in the undue prejudice analysis is whether

³ Effective November 13, 2018, the PTAB uses the same claim construction standard—which is set forth in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc)—as used in district court civil actions. *See* 37 CFR § 42.100(b).

1 the parties are competitors such that a stay would cause irreparable harm to the
2 patentee in the market.”; “Because [plaintiff] can adequately be compensated with
3 monetary damages for any infringement [of any valid and enforceable patent] and will
4 not lose sales or market shares as a result of a stay, [plaintiff’s] status as a non-
5 practicing entity weighs in favor of a stay.”). Should any claims survive the IPR
6 petitions, the short delay will have no adverse effect on Entropic because it can
7 attempt to seek money damages for the delay period. And because other aspects of
8 the case will proceed (e.g., discovery and motions to dismiss), the overall case
9 schedule may not necessarily be affected by this narrow delay of just the claim
10 construction schedule.

11 Further, there is no tactical advantage to be gained by DISH, as DISH did not
12 delay in filing its IPR petitions or moving for an extension (and potentially later a stay
13 of the case). DISH timely prepared and filed all *seven* of its IPR petitions—a
14 substantial undertaking and lengthy endeavor—within one year of the complaint’s
15 filing. *One-E-Way, Inc. v. Apple Inc.*, No. 06339, 2021 WL 4932518, at *3 (C.D. Cal.
16 Mar. 16, 2021) (Kronstadt, J.) (finding no prejudice where “Defendant’s IPR petitions
17 were timely filed prior to the 12-month deadline”). Moreover, DISH prepared all
18 seven petitions less than five months after Entropic served its infringement
19 contentions in September 2023, disclosing, for the first time, the full scope of asserted
20 claims.⁴ DISH also filed this motion promptly after filing the IPR petitions.

21 Because the requested extension will not unduly prejudice Entropic and
22 provides no tactical advantage to DISH, the Court should grant DISH’s requested
23 extension.

24
25

 ⁴ Entropic’s original complaint only listed a subset of the asserted claims. Prior to
26 Entropic serving its contentions, including during the Scheduling Conference on
27 August 9, 2023, DISH requested that Entropic provide a full list of asserted claims,
28 but Entropic declined. (*See* D.I. 93 at 115-116.) The full list of asserted claims was
not provided until September 29, 2023, when Entropic served its infringement
contentions.

V. CONCLUSION

For the foregoing reasons, DISH respectfully requests that the Court extend the claim construction schedule pending the PTAB's institution decisions of DISH's IPR petitions.

Dated: March 8, 2024

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By: /s/ Tyler R. Train

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